

Meeting Date: 6/23/2015

Report Type: Consent

Report ID: 2015-00589

Title: Contract: Purchase of Evidence Impound Towing and Storage Services

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or the City Manager's designee, to: 1) execute an agreement with Shanahan's Towing for evidence impound towing and storage services in an amount not to exceed \$288,600 for this two-year contract with three one-year renewal options; and 2) exercise the renewal options provided that sufficient funds are available in the budget adopted for applicable fiscal years.

Contact: Jacqueline Dowden, Police Captain, Metro Division, (916) 808-0701; Wendy Brown, Police Lieutenant, Metro Division, (916) 808-0706, Police Department

Presenter: None

Department: Police

Division: Metro Administration

Dept ID: 11001131

Attachments:

1-Description/Analysis

2-Agreement

City Attorney Review

Approved as to Form
Michael Fry
6/12/2015 12:41:07 PM

Approvals/Acknowledgements

Department Director or Designee: Sam Somers - 6/8/2015 8:28:40 AM

Description/Analysis

Issue: The Sacramento Police Department (SPD) has an ongoing requirement for a secure facility to store crime scene vehicles and maintain the chain of custody for evidence equipment. Invitation for bid number B15111141022 was issued on April 23, 2015 for evidence impound tow and storage services and of the two bids received, Shanahan's Towing was the lowest responsive and responsible bidder.

Policy Considerations: The recommendations contained in this report are consistent with; 1) City Code Section 3.56.090, which requires City Council approval to enter into contracts equal to or greater than \$100,000; and 2) City Administrative Policy 4101, which requires formal competitive bidding for all non-professional service contracts of \$100,000 or more.

Economic Impact: None

Environmental Considerations:

California Environmental Quality Act (CEQA): This recommendation does not constitute a "project" and is therefore exempt from the CEQA process according to CEQA Guidelines Section 15378(b)(2).

Sustainability Considerations: There is no sustainability consideration associated with this report.

Commission/Committee Action: None

Rationale for Recommendation: The SPD is responsible for ensuring the secure and safe storage of all vehicles, as evidence, which are connected to a crime. When a vehicle is taken into police custody, the vehicle must be kept in the same condition until released back to the owner. In order to manage this requirement, the storage facility must be enclosed, secure, climate controlled, and large enough to hold all impounded vehicles. The storage facility also needs to be in the City of Sacramento and accessible at all times to multiple police units for various reasons, such as fingerprinting, release of a vehicle to owner, and removal of other personal property to an owner or owner's designee.

In compliance with the City's policy for a competitive bid process, invitation for bid number B15111141022 was issued on April 23, 2015 and resulted in two bids, of which, Shanahan's Towing offered the lowest, most responsive and responsible bid. The second bidder, Tito's Towing & Repair, was deemed non-responsive as they did not meet the facility specifications.

Financial Considerations: Sufficient funding is available in the SPD's operating budget (11001141) for these services. Future year renewal options will be dependent on availability of funds.

Local Business Enterprise (LBE): Shanahan's Towing is a local business in Sacramento and is a certified LBE firm.

PROJECT #:
PROJECT NAME: EVIDENCE IMPOUND STORAGE & TOWING SERVICES
DEPARTMENT: POLICE
DIVISION: METRO

CITY OF SACRAMENTO

NONPROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

SHANAHAN'S TOWING
6211 POWER INN ROAD, SACRAMENTO, CA 95824
916-381-7964 PHONE

("CONTRACTOR"), who agree as follows:

1. **Contract.** The Contract shall consist of this Agreement and each of the following documents (if applicable), which are incorporated herein by reference:

Invitation to Bid	Contractor's Bid Proposal Form
Instructions to Bidders	Workers' Compensation Certificate
Local Business Enterprise (LBE) Requirements	Certificate(s) of Insurance
Drug-Free Workplace Policy and Affidavit	Technical Specifications
Declaration of Compliance (Equal Benefits Ordinance)	
Declaration of Compliance (Living Wage Ordinance)	

2. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
3. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the

manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

4. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
5. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.
6. **Wage Requirements.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.58, Living Wage. The requirements of Sacramento City Code Chapter 3.58 are summarized in Exhibit E. The CONTRACTOR is required to sign the attached Declaration of Compliance (Living Wage Ordinance) to assure compliance with these requirements. In addition, for services that constitute "public works" under California Labor Code section 1720 et seq., payment of the prevailing rate of wages is required as indicated in Exhibit A, Section 4 of this Agreement. If both prevailing wage and living wage requirements apply, CONTRACTOR shall pay the higher of the two rates.
7. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit F. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
8. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
9. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____
For: John F. Shirey, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Living Wage Requirements
- Exhibit F - Non-Discrimination in Employee Benefits

CONTRACTOR:

Shanahan's Towing
NAME OF FIRM

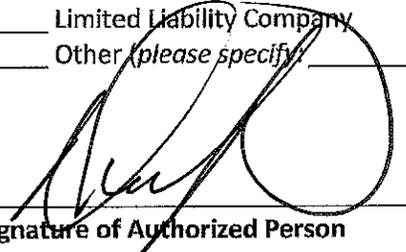
942986608
Federal I.D. No.

3263522-9 (ETDD)
State I.D. No.

3189
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

- Individual/Sole Proprietor
- Partnership
- Corporation (may require 2 signatures)
- Limited Liability Company
- Other (please specify) _____


Signature of Authorized Person

Dennis Shanahan
Print Name and Title

Additional Signature (if required)

Print Name and Title

**DECLARATION OF COMPLIANCE
Living Wage Ordinance**

Name of Contractor:

SHANAHAN'S TOWING

Address:

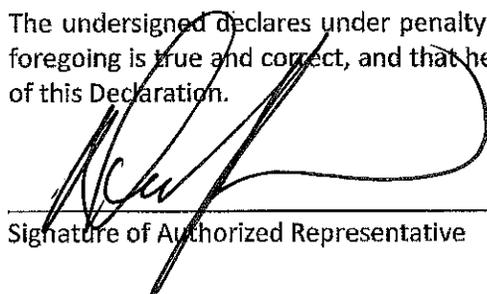
6211 POWER INN ROAD, SACRAMENTO, CA 95824

The above-named contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Living Wage Requirements (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Living Wage Ordinance codified at Chapter 3.58 of the Sacramento City Code (the "Ordinance"). If required by the Ordinance, Contractor will pay not less than the minimum compensation specified in the Ordinance to Contractor's employees, for all time spent performing any work under this Contract.
3. If the amount of this Contract is less than \$100,000, as a condition of receiving this Contract, Contractor will notify the City of Sacramento ("City") in writing if the aggregate value of this Contract and of any other Nonprofessional Services contract(s) covered by the Ordinance that the City has awarded to Contractor within the previous 12 months, is \$100,000 or more.
4. Contractor acknowledges and agrees that the Requirements, the Ordinance and this Declaration shall constitute part of this Contract, and that these provisions shall govern in the event of any conflict with any other provisions of the Contract.
5. Contractor further acknowledges and agrees that any violation of the Requirements or the Ordinance constitutes a material breach of this Contract, and that, if such a breach occurs, the City will be authorized to terminate the Contract, and pursue all available legal and equitable remedies.
6. If requested by the City, Contractor will promptly submit certified payroll records to the City, for itself and/or for Contractor's subcontractor(s), as requested by the City, and Contractor will take any other steps as may be required by the City to determine whether Contractor's subcontractor(s) or Contractor have complied with the Requirements and the Ordinance.
7. Contractor will require all of its subcontractors who are covered by these requirements to comply with the Requirements and any additional requirements that may be specified in the Ordinance, and Contractor will include these requirements in all subcontracts covered by the Ordinance.

8. Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees against any claims, actions, damages, costs (including reasonable attorney fees) or other liabilities of any kind arising from any violation of the Requirements or the Ordinance by Contractor or by any subcontractor retained to perform work or provide services under this Contract.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative

Date: 6/3/15

Print name: Dennis J Shanahan

Title: OWNER

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor:

SHANAHAN'S TOWING

Address:

6211 POWER INN ROAD, SACRAMENTO, CA 95824

The above-named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed

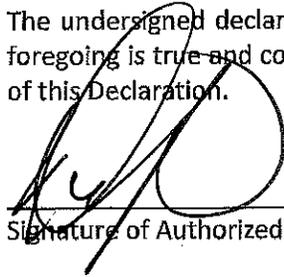
discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

- b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each

employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.

6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative

Date:

6/3/15

Print name:

Dennis Shanahan

Title:

OWNER

EXHIBIT A
NONPROFESSIONAL SERVICES AGREEMENT
SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Name/Title
Address
Phone/Fax/E-mails

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

Aaron Davis, Tow Manager
6211 Power Inn Road, Sacramento, CA 95824
916-381-7964Ph/916-381-5687Fax
office@shanahansautobody.com

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Scope of Services.

See Attachment 1 to Exhibit A

The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

3. Time of Performance

This one year agreement is effective as of August 17, 2015 and has four one-year renewal options.

4. Prevailing Wage Requirement. *[To be completed by the City Representative:]*

The services provided under this Agreement constitute "public works" under California Labor Code section 1720 *et seq.* and are either *[check one if applicable]:*

_____ Construction work in an amount exceeding \$25,000; or

_____ Alteration, demolition, repair, or maintenance work in an amount exceeding \$15,000.

If either line is checked above, this Agreement is subject to the provisions of Sacramento City Code section 3.60.180 which requires, among other things, that CONTRACTOR pay not less than the prevailing rate of wages, as determined by the Director of the California Department of Industrial Relations pursuant to California Labor Code section 1773. If payment of the prevailing rate of wages is required, CONTRACTOR and every lower-tier subcontractor shall submit certified payrolls and labor compliance documentation electronically when and as required by CITY. CONTRACTOR is responsible for compliance with Sacramento City Code section 3.60.180, and shall include these requirements in every subcontract or subagreement. This Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in California Labor Code section 1771.4.

B. TECHNICAL SPECIFICATIONS/PLANS/OTHER REQUIREMENTS

The intent of these specifications is to describe Evidence Impound Towing and Storage Services for various cars and light trucks, as required by the City of Sacramento Police Department (SPD).

1. Contract Representative

During performance of the contract, the City will be represented by:

Tow Administrator
Sacramento Police Department
5770 Freeport Blvd., Suite 100
Sacramento, Ca 95822
Telephone: (916) 808-0585
Fax (916) 808-0707

2. Definition of Terms

- A. Chief of Police – For the purpose of this contract, the Chief of Police of the City of Sacramento Police Department shall refer to him/her or a designee
- B. City – City of Sacramento
- C. Contractor – The successful bidder with which a contract is established to provide the services described in this Invitation for Bid
- D. Disqualification – The elimination of a Contractor from any further participation in the SPD's Evidence Impound Contract
- E. Evidence Impound Tow – Tow services conducted pursuant to 22655.5 CVC
- F. Portal to Portal – Service shall start at the time of arrival at the place of the call for service, and shall end at the estimated time of return to the evidence impound storage location, or the completion of the call, if another call is pending, whichever is shorter. Return to the evidence impound storage facility includes a reasonable and verifiable amount of time required to place the tow truck back into service when unusual circumstances required additional time that are not part of normal operating procedures. Examples:
 - 4 X 4 recovery in the mud: reasonable to charge for cleaning mud from truck and equipment;
 - Reasonable to charge for cleaning burn debris from carrier bed;
 - Car towed leaved mud track on bed of carrier; not reasonable to charge for cleaning of carrier bed

For the purpose of this contract, "Portal to Portal" shall also mean "Portal to End of Service"

- G. Possession – Possession is deemed to arise when the vehicle is removed and is in transit or when vehicle recovery operations or load salvage operations begin
- H. Public Safety Response – A Public Safety Response is a response which results in a storage of a vehicle at the direction of an officer. This does not include storage at the request of the vehicle operator, registered owner, or agent
- I. Termination – The removal of the Contractor from continued participation in the remainder of the term of this Evidence Impound Contract or the expiration of the contract period, whichever comes first
- J. Tow Truck – A tow truck is defined in Section 615 of the California Vehicle Code ("CVC") as a vehicle which includes slide back carriers and wheel lift vehicles. A "trailer for hire" shall not be approved for listing as a Class A tow truck.
- K. Vehicle Recovery Operation – An operation involving the process of up righting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle. This will usually be limited to operations requiring a Class B, C, or D tow truck(s).

3. Facility Requirements

- A. Tow Facility Location – The Contractor's facility shall be located within the City of Sacramento and a 15 mile radius of the intersections of Highway 50, Business 80 (Capital City Freeway) and State Route 99.
- B. Normal Business Hours – Normal business hours shall not be less than 8am – 5pm, Monday through Friday, except for the following City recognized holidays: New Year's Day, Martin Luther King Day, President's Day, Cesar Chavez's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, day after Thanksgiving, and Christmas Day.
- C. Signage – Contractor must meet the following signage requirements at all times:
 - 1) The Contractor shall display a sign at all cashier's stations, as described in Section 3070 of the California Civil Code. Sign must be clearly visible at all times.

- a. Disclosing all towing fees and other charges in force
 - b. The sign shall state the following: "Any person being charged for a Lien Processing Fee is entitled to copies of the supporting documentation showing the lien processing completed as of that date."
- 2) An operator's place of business shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from the street. The size of the sign and lettering shall be comparable to the sign and lettering of neighboring businesses. The sign shall be visible at night. No signage or postings shall indicate there are any evidence impound vehicles being stored at this facility for any agency.
- D. Physical Characteristics – The primary office shall be large enough to accommodate necessary personnel and administrative records. Contractor shall provide a public, permanent restroom facility, either unisex or separate and a public indoor or covered outdoor waiting area to seat at least four (4) people. Restroom facilities shall be maintained in a functional, clean and orderly fashion.
- E. Public Safety – All adequate measures shall be taken to protect the safety of the public.
- F. Access – The public shall have direct, unabated access to the inside office waiting area.
- G. Secured Facility – In order to comply with General Order 536.02, Contractor must possess a secure facility with four (4) solid walls, attached solid roof, and an improved surface on which all evidence impounds must be stored at all times. Within this primary storage facility, a separate area for evidence impound vehicles, also having four (4) solid walls that extend from floor to ceiling, shall be provided with the following requirements:
- Be an area where all evidence impound cars shall be kept free from any form of contamination, casual or intentional, by persons or by nature, such as touching, examining, wind, water, dust, or rain
 - Is an area clearly separated from all other stored vehicles and work area by solid walls
 - All storage area surfaces used for the purposes of this contract must be improved as per the most current and applicable Sacramento City Codes, regardless of any exemptions, variances or zoning ordinances on record for the property
 - The total capacity of the primary evidence impound storage location must total no less than 4,800 square feet for use in connection with this contract. All efforts

shall be made to ensure adequate space available between and around each vehicle, no less than 3 feet on each side.

- Site must be secure at minimum with a 24 hour a day, 7 days a week ("24/7") monitored alarm system and secure door locks and pad locks for the roll up door(s). The use of guard dogs is prohibited around the evidence impound vehicles. Neither the primary facility nor the evidence impound storage area shall be identified with any special markings or signs to indicate the storage of evidence vehicles. All additional and necessary security provisions will be employed to ensure restricted access and a high level of security at all times.
- Have adequate lighting within the evidence impound area - 28 to 65 foot candles or 300 to 700 lux. Additional supplemental lighting via skylights is acceptable, but must easily achieve complete darkness during daylight hours for evidence processing.
- Location should contain a rolling work bench or two (2) carts to be used for the processing of vehicles and items of evidence.

Note: The evidence impound storage area designated for use by this contract shall not be used for any other vehicle storage while this contract is in effect. If no vehicles are currently being stored by the SPD, the space shall remain vacant. Vehicles that were originally towed by the SPD may continue to occupy space within this storage area while another agency is now financially responsible for their storage.

4. Administrative Matters

- A. Contract Period – Any contract (s) resulting from this bid shall be effective for a one (1) year period from the date of award by City Council.
- B. Contract Extension – This contract may be extended on a year to year basis under the same terms and conditions. However, in no case shall the renewal extend beyond five (5) years from the original date of award. Prices offered will be fixed for the life of the contract according to those prices listed in the Pricing Schedule.
- C. Compliance – Bidders must comply with all requirements of this scope of work effective the date the bid is submitted to the City. Compliance will be subject to immediate inspection and verification. Failure to comply may result in disqualification from this bidding process.
- D. Certificate of Secretary/Fictitious Name Statement
 - 1) Certificate of Secretary – a document filed with the State of California that authorizes the owner(s) to sign legal agreements on behalf of the corporation.

- 2) Fictitious Name Statement – required per California State law (Business and Professions Code section 17910), which requires that every person, partnership, corporation, or other association, who regularly transacts business in California for profit under a Fictitious Business Name, files a statement with the County in which the principal place of business is located.

Note: Any business submitting a bid should be prepared to submit a copy of one of these documents or provide a written explanation of their exemption.

- E. Purchase Order – A purchase order will be issued to the Contractor on behalf of the City organization(s) who will be ordering items/services covered in the contract. The purchase order will be enclosed with the resulting contract or will be issued shortly thereafter and will become an integral part of the resulting contract. Each purchase order will cite a specific dollar value to cover a particular item or specified period of time. If a contract is for a specific period of time and extends beyond the close of the City's fiscal year of June 30th, a second purchase order may be issued.

The purchase order does not supersede any provision of the resulting contract. Performance time and dates are determined solely by the contract and any modifications thereto.

Delivery of material and/or services is not to begin until receipt of the purchase order and/or notification by the City Procurement Services Manager.

- F. Change of Address – The Contractor must notify the City of any change in his/her primary or secondary storage location, evidence impound storage facility or business office at least thirty (30) days in advance of the actual change in location. All new locations are subject to all facility requirements contained in this agreement. Facility inspections may be conducted at any time for contract compliance.
- G. Lease Agreements/Property Tax Bills – The Contractor shall provide the City with a copy of any lease, including any modifications or extensions, for Contractor's primary and secondary storage location(s), evidence impound facility or business office(s), if applicable. In the event the property is owned outright, Contractor shall provide a copy of the most recent property tax bill.
- H. Non-exclusive – The services provided to the City in this contract are not exclusive and the City may seek the same services from another vendor.
- I. Exceptions – The submission of a bid shall be considered an agreement to all the terms, conditions, and specifications provided herein.

5. Rates, Charges, and Fees

- A. Estimated Quantities – Items and quantities listed on the bid sheet are based on past usage and have constituted a majority of the items required. Other items may be required. Quantities are subject to increase or decrease. Bid items are listed for evaluation purposes only. It is necessary to bid a mark-up rate for services sought in conjunction with this contract outside of the scope of services. These can include the mark-up rate for Class B, C, or D tows.
- B. Base Tow Charge – The Base Tow Charge shall include ten (10) miles and fifteen (15) minutes standby time. Any additional miles shall be billed on a per mile basis and shall start at the place the vehicle is picked up by the Contractor's tow vehicle. The duration of any standby time in excess of fifteen (15) minutes for which tow company seeks payment, shall be verified by the officer in charge at the site by his/her designee.

Note: There shall be no additional charge for road services or towing performed on holidays, weekends, or during the evening or early morning hours.

- C. Mark-up Rates – The Contractor shall submit a mark-up rate (percentage of the cost of the operator) for retail equipment, specialized labor, and Class B, C, and D evidence impound tows, not otherwise listed on the application.
- D. After Hour Gate Fee – After regular business hours a "gate fee" shall be charged to the City when entry into the evidence impound storage facility is required. All response times for all calls shall be within thirty (30) minutes from notification by SPD's designated employee. This after hours "gate fee" shall be billed to the City as the base tow charge as bid in the contract. Stand-by time shall only apply when asked by SPD personnel to stand-by with them at the facility.
- E. Out of Town Rates – Out of town hourly rates shall apply to those calls for service that extend either beyond the Sacramento County boundaries or beyond a thirty-five (35) mile radius from the Downtown intersections of Highway 50, Business 80, and State Route 99, whichever extends further (as per Google Earth at <http://earth.google.com/>). These hourly rates shall be offered in this bid. All routes shall use www.Mapquest.com for mileage billing with a printout attached to the invoice submitted for payment. The originating start point and end point shall be the tow company's evidence impound storage facility.
- F. Advance Payment – There shall be no advance payment of towing, storage or lien fees to other tow companies. Anytime a vehicle is towed as evidence from another tow company that vehicle shall be released back to that same tow company after it is released by SPD and no longer an evidence impound per 22655.5 CVC. If the originating tow company does not want the vehicle back, the Contractor may initiate their own charges and lien processes. The Contractor must contact the originating tow company prior to attempting to

deliver the vehicle to the originating tow company to ensure they will accept delivery. If the vehicle is going to be given back to the originating tow company, SPD shall pay for the tow at the base rate offered in this bid.

G. Additional Costs

- 1) Actual Costs – If a Contractor performs a service for which a required rate was not submitted to, and approved by the City, the Contractor shall only be entitled to charge for the actual cost of that service. Example: contract labor rate not submitted; the Contractor may only charge for the actual rate paid for the labor.
- 2) Estimate – Whenever services are requested which are not covered, the Contractor shall advise the City or the requesting officers/detectives of the estimated cost of the service before it is performed.
- 3) Lien Fees – Lien Fees shall not be charged to the City of Sacramento or the Sacramento Police Department for any vehicle(s) that is/are stored pursuant to 22655.5 CVC. Lien Fees may be charged to the registered owner or legal owner of a vehicle once it is released from Police custody as evidence impound vehicle(s).

6. Contractor's Performance

- A. Tow Experience – The City seeks a company with a minimum of five (5) years of verifiable experience in the field and a minimum of five (5) years of law enforcement towing experience; either rotational or evidence impound. References will be required as proof of this experience. All experience must have been within the previous (8) years with a minimum of one hundred twenty (120) tows per year.
- B. Compliance with City Codes, State and Federal Laws – In addition to the provisions herein, the evidence impound facility shall comply with all City Codes and safety regulations applicable to the proposed use. The Contractor's facility, towing equipment, and drivers must comply with all applicable Federal, State and local regulations.
- C. Response Time – Response time is the period of time from a Contractor's notification by City of Sacramento's designated employee to the arrival of the tow truck at the location requested. All road services and towing shall be provided 24/7, including holidays and weekends. All response times for all calls within the City limits shall be within thirty (30) minutes from notification by SPD's designated employee. Response time is critical to the maintenance of this agreement. Failure to comply with the response times stated can be reason for termination.
- D. Storage – Storage shall commence at the time the vehicle arrives at the storage facility. Charges shall be based on a daily rate, notwithstanding State law requirements which indicate that no charge exceeding that for one day of storage will be made if, within 24 hours after the vehicle is placed in storage, a

request is made for the release of the vehicle. If the request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar basis for each day, or part thereof. The daily rate extends from midnight to midnight.

- E. Moving Vehicles – During normal business hours, the Contractor shall provide assistance, including, but not limited to, moving or lifting stored towed vehicles, without additional charges.
- F. Vehicle Releases – Prior to releasing a vehicle to the registered owner, or his/her agent, or another tow company, a release must be obtained from the SPD for vehicles towed and/or stored pursuant to Section 22655.5 CVC. These can be originals, faxed copies from an SPD fax number, or emailed from an official SPD or City email account ending with either @pd.cityofsacramento.org or @cityofsacramento.org or @sacpd.org or @saccity.org.
- G. Inspection of Towed Vehicle VIN and License Plates – The Contractor shall visually inspect, when possible and practical, every tow on-scene prior to hooking up or within twenty-four (24) hours of each tow dispatch call to verify that the license plates and VIN (Vehicle Identification Number) on every vehicle or trailer matches the information documented by the Officer on the SPD188 Form. If any variation or discrepancy exists, the contractor will immediately notify the Officer on-scene or the Office of Investigations at (916) 808-0650 to contact the Lead Investigator assigned to the case. A new SVS (Stolen Vehicle System) entry may be needed in some instances.
- H. Class B, C and D Tows – Class B, C, and D vehicles may be subcontracted out to a reputable tow company at the discretion of the evidence impound tow contractor. Billing for these tows shall utilize the mark-up rate as offered in this bid. The subcontractor will be accompanied and supervised at all times by the evidence impound Contractor's tow driver in his/her authorized tow truck. This is to maintain the chain of custody of these vehicles and to ensure proper techniques are utilized during the towing operations. These vehicles shall be stored at the evidence impound storage facility at all times. Copies of all original invoices must accompany all billing to the City of Sacramento.

7. Contractor's Records

- A. Electronic Inventory – The successful bidder shall maintain an active electronic inventory of all vehicles placed on impound status per 22655.5 CVC for no less than five (5) years and will electronically (via email) notify SPD, at a minimum once a week, regarding the number of vehicles currently in evidence impound storage. Notification will include the impound date, vehicle license plate number, make, model and year, SPD Report Number, connect-up report number (if any), detective assigned for follow-up, date CSI responded to

process the vehicle, SPD authorized release date, badge and name of SPD personnel who released the vehicle, any advanced fees pending payment, and if the vehicle was towed from another tow company, list the name and contact information.

This database shall include all separate itemized charges, all vehicle information, all report information, and all supporting release documentation. This database must be capable of generating reports for audits at any time.

- B. Invoices – All invoices shall include the date, the Contractor's unit number and/or driver dispatch, the make, year and license number of the vehicle impounded, the address of the road call, the address where the vehicle was towed to (if towed), SPD report number, starting and ending mileage of the towed vehicle, the reason for the road call, and the starting and ending times of the road service. Each invoice shall be signed by the driver of the tow vehicle. Driver's name shall appear legibly on the invoice.

If invoices are incorrectly priced, the City shall notify the Contractor and will withhold payment until the pricing is corrected. Continual invoice errors, may be grounds for termination.

- C. Tow Records – The Contractor shall maintain records as described below of tow services provided to public agencies as well as all private persons or entities while under contract with the City. Such records shall be retained for a period of five (5) years, and shall be open to inspection during business hours immediately upon request by representatives of the SPD or City.

At a minimum, records shall contain:

- 1) Tow services – The contractor shall record the following information for every tow:
 - Original or copy of the SPD 188 Tow Form
 - Name, address, and phone number of person, if available, whose vehicle was towed
 - VIN, license number, make/model/year of each vehicle towed
 - Location from which the vehicle was towed
 - Name and employee number of driver assigned to each tow
 - Location vehicle was towed to (if different from Contractor's primary storage facility)
 - Reason for tow
 - Location where vehicle was towed (if secondary tow is made) and any and all subsequent location transfers or moves, including the dates and time of each move
 - Name of party to whom the vehicle was released
 - Method and date of payment

- All fees and charges for said tow, showing specifically towing, storage, lien fees, etc.
- Any items of personal property released from a vehicle, including the date, time, and name of person receiving the items
- Disposition of towed vehicles that are unclaimed
- All proceeds from the sale of towed vehicles that are unclaimed
- All documentation of purported claims, relating to damage, theft, vandalism, other acts of negligence or damage from acts of God as they relate to each involved vehicle, trailer or conveyance
- Date and time the request for tow was received
- Date and time a tow unit departs the tow facility (or residence of driver if after business hours)
- Date and time the tow unit arrives at the Contractor's storage facility
- Date and time any contents are released
- Date and time of release of the vehicle

2) Lien Sale Data – The contractor shall record the following information for every lien sale:

- Date the lien processing begins
- Date the notice of lien sale is mailed
- Date and time of lien sale
- Location of lien sale
- Identification of purchaser
- Monies received as a result of the lien sale
- Amount of excess monies forwarded to the State of California

D. Personnel Records – All employees, drivers, and subcontractors, both current and former shall have a secured personnel file at the primary business office that shall contain at a minimum, records related to their employment, training, discipline, FLMA and leave requests, vacation requests and sick time records. Any additional personnel documentation needed to comply with any City contract shall also be contained within these records.

8. Truck Driver and Equipment Specifications

A. Background Check Requirements – The successful bidder shall maintain a current City of Sacramento Tow Car Permit for each tow vehicle used under any contract resulting from this solicitation. All drivers shall have a valid City of Sacramento Tow Car Driver's Permit. Copies of permits must be presented upon request. Failure to maintain current permits shall be reason for termination. All company personnel who have access to the evidence impound storage area must undergo an annual background check. All tow drivers shall undergo a background check when they renew their Sacramento City Tow Driver Permit. All associated costs shall be at the Contractor's expense,

including fingerprinting. No prior felons with convictions within the last five (5) years will be allowed access to the storage area or be allowed to respond to tow any evidence impound vehicle, regardless of City permit status.

Note: All permits must be in force prior to award of any contract or any extension renewal.

- B. Mechanic or Mechanical Technician – A Mechanic or Mechanical Technician must be available to work business hours: Monday through Friday, 8am to 5pm and also available on a 24/7 on-call basis with a thirty (30) minute response time. This person must be capable of assisting in a variety of automotive disassembly techniques including removing engines, transmissions, door trim panels, dash covers, windows, and opening trunks or hoods. Additionally, all tools necessary to provide these services should be readily available, including hand-tools, cherry picker or similar devices, and any pneumatic-tools.
- C. Forklift Operator – Contractor must employ at least one (1) Certified Forklift Operator (per 29 CFR 1910.178(1)(OSHA-199)) available to work business hours, Monday through Friday, 8am to 5pm and also available on a 24/7 on-call basis with a thirty (30) minute response time. Operator must be certified to operate any designated forklift.
- D. Tow Vehicles – The Contractor must have a sufficient number of qualified drivers with City Tow Car Permits and a minimum of four (4) Class A tow vehicles with a minimum of 15,000 GVWR meeting the tow truck specifications and having the equipment specified for a Class A tow truck. This requirement must be met with a minimum of two (2) recovery/wheel lift trucks and the remainder can be any combination of recovery/wheel lift or flat bed carrier trucks. All tow trucks used must have a valid City Tow Truck Permit and must meet all Federal and State requirements and laws. The Contractor shall use only tow vehicles that are certified by a state-licensed inspection facility or have received a certificate issued by the California Highway Patrol when responding to tow requests.
- E. Forklift – Contractor must have a forklift available on-scene at all times capable of lifting and moving any Class A vehicle, or portion thereof, within the evidence impound storage area. Not all vehicles will be complete or be capable of rolling on their own. Wheel dollies are not sufficient and not acceptable substitutes.
- F. Changes of Equipment or Drivers – The Contractor shall immediately notify the Sacramento Police Department Tow Administration Office in writing of any changes in or additions to drivers, equipment or employees, including deletion of tow trucks.

9. Professional Demeanor and Conduct

- A. Professional Demeanor and Conduct – At all times Contractor and Contractor's tow truck drivers and all other employees and any sub-contractors shall conduct themselves in a courteous, honest, and professional manner in all dealings with the public and the City's employees, volunteers, and agents. The City may at any time conduct random customer service inquiries with citizens who have been towed by any contractor acting under an agreement with the City of Sacramento for these services. Failure to comply with this requirement may result in termination.

All tow operators working under contract for the City of Sacramento for evidence impound services will abide by the *California Tow Truck Association Code of Ethics*.

- To show my faith in the worthiness of my profession by upholding high standards, honor, and a high degree of integrity
 - To provide the general public with the best possible service and to promote a sense of personal obligation to each individual
 - To comply with all Federal, state, county, and city laws and regulations
 - To aid my fellow industry man in time of need and not to do anything which might conceivable injure the reputation of my competitors
 - To seek success and to demand fair remuneration that is justly due, but accept no profit at the loss of my own self-respect because of unfair advantage taken or questionable acts on my part
 - To provide the public with adequate equipment, which is kept as clean and neat as possible, and to train my drivers to be polite and courteous during public contact
 - To employ truth and accuracy in advertising and soliciting and to honor any commitments made in the course of business
- B. Misconduct – While under contract with the City, Contractor and his/her employees shall refrain from any acts of misconduct, including, but not limited to any of the following:
- 1) Rude or discourteous behavior directed towards City personnel or citizens for whom service is provided. Rude or discourteous behavior shall mean any act that would insult, aggravate, disturb or frustrate a person of reasonable sensibilities, which act(s) include, but are not limited to, using profanity or inappropriate language, manifesting an uncooperative and/or angry/aggressive demeanor, performing acts of vandalism, failing to respond to questions in a courteous and professional manner, intentionally misrepresenting rates or tow procedures or attempting to manipulate rates or procedures to the detriment of citizens or City employees.

- 2) Sub-standard service, customer service, selective service, or refusal to provide service which the tow company is capable of performing
- 3) Any act of sexual harassment or sexual impropriety
- 4) Unsafe driving practices
- 5) Any objective symptoms of alcohol and/or drug use/abuse while performing any related tow services for the City of Sacramento.

EXHIBIT B

NONPROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$ 288,600.

2. **Billable Rates.**
CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. [Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]

3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.

4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.

 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described above.

D. Requests for payment shall be sent to:

*Tow Administrator
Sacramento Police Department
5770 Freeport Blvd., Suite 100, Sacramento, CA 95822
916-808-0506*

Attn: Tracy Youngstedt

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.

6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

SECTION III – BIDDER RESPONSE DOCUMENTS

G. PRICING SCHEDULE

For furnishing to the City of Sacramento Police Department, Evidence Impound Towing and Storage Services according to the specifications and prices contained herein for this potential five (5) year contract.

The bid items listed below are for evaluation purposes only. Quantities and items specified are annual estimates of the City's requirements and availability of funds. Contractor agrees to furnish more or less than the estimates at the unit price offered as actual needs occur throughout the contract period.

- 1) All quotes for tow service within the City limits shall include the cost of ten (10) miles of towing and fifteen (15) minutes of standby time. All tow services and charges that are local and Out-of-Town shall start from the time vehicle is picked up, not the time tow vehicle is dispatched. This base rate shall also be known as the hourly rate for towing services.
- 2) All quotes for winching shall include the cost to travel to the scene, the use of one hundred feet (100) of cable and thirty (30) minutes of standby time. Winching is considered a separate service and is in addition to the base tow.

Vendor Note: All items must be priced for bid to be considered responsive. Failure to complete all items below will result in rejection of bid. No surcharges, fuel charges or other extraneous charges will be allowed. **Bid Pricing offered for items 1 through 5 will be fixed for the first two (2) years of the contract.**

<u>Item No.</u>	<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extended Price</u>
1	3918	Inside Vehicle Storage (per day charge) (Refer to Technical Specifications, Sections 3 and 6 for detail)	\$ 10. ⁰⁰	\$ 39180. ⁰⁰
2	390	Tows (vehicle must be rated to tow 15,000 GVWR or higher), Class A sling/wheel/lift/dolly or slide bed truck. Conditions will determine most suitable equipment. Slide bed truck is preferred.	\$ 38. ⁰⁰	\$ 14820. ⁰⁰
3	120	Additional Standby Time (Quote for a 15-minute period)	\$ 15. ⁰⁰	\$ 1800. ⁰⁰
4	678	Charge per mile after 10 miles Base Tow price	\$ 2.50	\$ 1695. ⁰⁰
5	5	Winching (Quote shall include 100ft of Cable and 30 minutes standby time)	\$ 45. ⁰⁰	\$ 225. ⁰⁰
ANNUAL GRAND TOTAL (Items 1 through 5)				\$ 57720.⁰⁰

Item 6 - Labor Rate:

The following hourly labor rate shall be the total hourly charge for any additional work required by the City, to include engine or transmission removal, or vehicle disassembly for evidence collection. Such rate will include as a minimum, all wages, payroll taxes, fringe benefits, insurance, tools, transportation, overhead, professional and general administrative expenses.

Hourly Rate-Years 1 and 2:	\$ <u>10.⁰⁰</u>	per hour (Shall not exceed posted hourly rate)
Hourly Rate-Year 3:	\$ <u>10.⁰⁰</u>	per hour (Shall not exceed posted hourly rate)
Hourly Rate-Year 4:	\$ <u>10.⁰⁰</u>	per hour (Shall not exceed posted hourly rate)
Hourly Rate-Year 5:	\$ <u>10.⁰⁰</u>	per hour (Shall not exceed posted hourly rate)

Item 7 - Mark-up Rate:

The following mark-up rate shall be the total mark-up for any additional work required by the City, that contractor must use a sub-contractor or procure from another company. This mark-up rate shall include the rental of specialized equipment and sub-contracting of Class B, C, or D towing services.

Mark-up rate percentage-Years 1 & 2	<u>10.⁰⁰</u>	% (Cost to the City will be the posted rate plus mark-up)
Mark-up rate percentage-Year 3	<u>10.⁰⁰</u>	% (Cost to the City will be the posted rate plus mark-up)
Mark-up rate percentage-Year 4	<u>10.⁰⁰</u>	% (Cost to the City will be the posted rate plus mark-up)
Mark-up rate percentage-Year 5	<u>10.⁰⁰</u>	% (Cost to the City will be the posted rate plus mark-up)

Item 8 - Out-of-Town Hourly Rate:

The following out-of-town hourly rate shall apply to those tow services as stipulated in Section 1.35. Out-of-Town hourly rates shall apply to those calls for service that extend either beyond the Sacramento County boundaries or beyond a thirty-five (35) mile radius from the intersections of Highway 50, Business 80, and State Route 99, whichever extends further (per Google Earth at: <http://earth.google.com/>). All routes shall use www.Mapquest.com for mileage utilizing all highways and freeways when present and possible. Invoices must have a printout attached when submitted for payment. The originating start point and end points shall be the tow company's evidence impound storage facility. No additional billing for stand-by time or mileage shall apply to out-of-town services.

Out-of-Town Hourly Rate-Years 1 & 2:	\$ <u>10.⁰⁰</u>	per hour (Shall not exceed posted rate).
Out-of-Town Hourly Rate-Year 3:	\$ <u>10.⁰⁰</u>	per hour (Shall not exceed posted rate).
Out-of-Town Hourly Rate-Year 4:	\$ <u>10.⁰⁰</u>	per hour (Shall not exceed posted rate).
Out-of-Town Hourly Rate-Year 5:	\$ <u>10.⁰⁰</u>	per hour (Shall not exceed posted rate).

Item 9 through 12 will be used in the five (5) year calculation to determine the lowest bidder for the life of the contract, so it is imperative that all items be entered in order for this determination to be made. Failure to complete all line items will be basis for bid rejection.

Item 9 - Inside Vehicle Storage (see item 1 above) - Year 3	Unit Price\$ <u>10.⁰⁰</u>
Inside Vehicle Storage - Year 4	Unit Price\$ <u>10.⁰⁰</u>
Inside Vehicle Storage - Year 5	Unit Price\$ <u>10.⁰⁰</u>

Attachment 1 to Exhibit B

BID NO. B15111141022

Item 10 – Tows - Year 3 (see item 2 above)
Tows - Year 4
Tows - Year 5

Unit Price \$ 38.00
Unit Price \$ 38.00
Unit Price \$ 38.00

Item 11 – Additional Standby - Year 3 (see item 3 above)
Additional Standby - Year 4
Additional Standby - Year 5

Unit Price \$ 15.00
Unit Price \$ 15.00
Unit Price \$ 15.00

Item 12 – Charge per mile - Year 3 (see item 4 above)
Charge per mile - Year 4
Charge per mile - Year 5

Unit Price \$ 2.50
Unit Price \$ 2.00
Unit Price \$ 2.50

Item 13 – Winching - Year 3 (see item 5 above)
Winching - Year 4
Winching - Year 5

Unit Price \$ 45.00
Unit Price \$ 45.00
Unit Price \$ 45.00

EXHIBIT C

NONPROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall *[check one]*



Not furnish any facilities or equipment for this Agreement;

or



Furnish the following facilities or equipment for the Agreement *[list, if applicable]*:

EXHIBIT D
NONPROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR

sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2.105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento

Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

- 11. Insurance Requirements.** During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of

activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than one million dollars (\$1,000,000) per accident. The policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

Workers' Compensation waiver of subrogation in favor of the CITY is not required. _____ (CITY Representative initials)

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors; products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors; and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors.

- (2) Automobile Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage, including excess insurance, shall be primary insurance as respects CITY, its officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento

c/o Ebix RCS

Reference #: (This number will be provided by EBIX after Agreement approval.)

PO Box 257

Portland, MI 48875-0257

Insurance certificates also may be faxed to (770) 325-3340, or e-mailed to: CertsOnly-Portland@ebix.com

- (3) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
 - A. **Use Tax Direct Payment Permit:** For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Contract or Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - B. **Sellers Permit:** For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
 - C. The above provisions shall apply in all instances unless prohibited by the funding source for the Contract or Agreement.

EXHIBIT E
LIVING WAGE REQUIREMENTS
(Nonprofessional Service Agreement)

The Living Wage Ordinance

The City of Sacramento's Living Wage Ordinance (the "LWO") is codified as Chapter 3.58 of the Sacramento City Code. The LWO requires certain firms that enter into agreements or contracts (all subsequent references to a "contract" or "contracts" will refer to both contracts and agreements) to provide certain services to or for the CITY, to pay a specified minimum level of compensation to their employees for time spent performing any work on the CITY contract. The LWO also applies to certain subcontractors.

The LWO applies to contracts entered into, amended, or renewed or extended at the CITY's discretion, on or after March 1, 2004 (the "LWO Effective Date").

Contracts and Contractors Covered by the LWO

Determining whether the LWO applies to a specific CITY contract, contractor or subcontractor, depends on whether the contract, contractor and/or subcontractor meet the criteria specified in the LWO for contract type, contract amount, contractor size (# of employees), subcontract amount and subcontractor size (# of employees). These criteria are summarized below.

Contract Type

The LWO applies only to contracts for Nonprofessional Services. Under the LWO, this includes contracts for any services of a nonprofessional character, including but not limited to tree trimming services, repair services for motor vehicles and office equipment, vehicle towing, and security services.

The LWO does not apply to: (1) Incidental services, such as delivery, installation or maintenance, that are provided under contracts for the purchase or lease of equipment, supplies, or other personal property; (2) contracts that are subject to CITY, state, or federal prevailing-wage requirements; (3) contracts for professional services (including but not limited to services rendered by engineers, architects, auditors, banks, consultants, actuaries and attorneys); and (4) contracts with nonprofit corporations that are organized under section 501 of the Internal Revenue Code and have fewer than 100 employees, whether full or part time.

Contract Amount

The LWO applies to contracts entered into or amended after the LWO Effective Date that provide compensation from the CITY of \$100,000 or more. In addition, the LWO applies to a contract entered into or amended after the LWO Effective Date that, by itself, does not reach this amount, if the aggregate value of that contract and of any other Nonprofessional Services contracts covered by the LWO that the CITY has awarded to the same person or firm within the previous 12 months, is \$100,000 or more. IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE WHETHER THIS AGGREGATE VALUE IS \$100,000 OR MORE, AND TO NOTIFY THE CITY IN WRITING WHENEVER THIS IS THE CASE.

Contractor Size

The LWO only applies to a contractor that has at least 25 employees, working either full or part time. The number of employees that a contractor has is determined by adding the contractor's employees and the employees of any other person or entity deemed to be a "Related Person" under the LWO.¹

Subcontract Amount

The LWO applies to a subcontractor providing services under a covered contract if the amount of the subcontract is at least 25 % of the contract amount, without regard to the number of employees the subcontractor has.

Subcontractor Size

The LWO also applies to a subcontractor providing services under a covered contract if the subcontractor has at least 25 employees, working either full or part time, whether or not the amount of the subcontract is at least 25 % of the contract amount.

Payment of Living Wage to Covered Employees

If a contractor or subcontractor meets the criteria specified in the LWO for contract type, contract amount, contractor size, subcontract amount and/or subcontractor size, the contractor or subcontractor is deemed to be a "Covered Employer" under the LWO. The LWO requires a Covered Employer to provide specified minimum compensation to its employees who perform work directly related to the CITY contract (these employees are called "Covered Employees" under the LWO), for all hours the Covered Employees perform under the CITY contract.²

¹ The LWO provides that a person or entity is a Related Person when any of the following circumstances exists:

- (1) The person or entity and the contractor are both corporations, and (i) share a majority of members of their governing boards, or (ii) have two or more officers in common, or (iii) are controlled by the same majority shareholder or shareholders (control means more than 50% of the corporation's voting power), or (iv) are in a parent-subsidiary relationship (such a relationship exists when one corporation directly or indirectly owns shares possessing more than 50% of another corporation's voting power); or
- (2) The person or entity otherwise controls and directs, or is controlled and directed by, the contractor, as determined by the City Manager.

² A Covered Employee includes full-time, part-time, contingent, contract and temporary employees, but does not include: (1) individuals who participate in job-training-and-education programs that have, as their express purpose, the provision of basic job skills and education to participants, with the goal of earning a high-school-equivalency diploma and permanent employment; (2) student interns; (3) individuals participating in specialized-training programs; and (4) an employee whose term and conditions of employment are governed by a bona fide collective-bargaining agreement containing an express waiver of the LWO.

The minimum compensation required is as follows:

- (1) If health benefits are provided to Covered Employees and the Covered Employer's contribution for the benefits is at least \$1.50 for each hour, then the rates are as follows:
 - (a) During 2007, the greater of \$10.00 an hour or \$9.00 adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1, 2004, through December 31, 2006.
 - (b) For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1 through December 31 of the immediately preceding year.

- (2) If health benefits are not provided to Covered Employees or if health benefits are provided but the Covered Employer's contribution for the benefits is less than \$1.50 for each hour, then the rates are as follows:
 - (a) During 2007, the greater of \$11.50 an hour or \$10.50 adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1, 2004, through December 31, 2006.
 - (b) For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1 through December 31 of the immediately preceding year.

Notification to Covered Employees

The LWO requires a Covered Employer to give each existing employee and (at the time of hire) each new employee a copy of the following written notification:

This company may enter into a contract to perform services for the City of Sacramento. If you work on such a contract, then you are entitled to be paid a living wage for each hour so worked. For more information, see Chapter 3.58 of the Sacramento City Code, which can be viewed at www.cityofsacramento.org.

The LWO requires the above notification to be provided in each language spoken by 10% or more of the Covered Employer's workforce.

The LWO also requires a Covered Employer to inform all employees of their possible right to the federal Earned Income Credit (EIC), and to make available to those employees any forms required to secure advance EIC payments from the Covered Employer.

Subcontractor Compliance

A contractor is responsible for requiring all of its subcontractors who are covered by these requirements to comply with the provisions of the LWO, by including these requirements in all subcontracts covered by the LWO.

Other Provisions of the LWO

Use of Funds Paid Under CITY Contracts

Under the LWO, Covered Employers may not directly use CITY funds to persuade Covered Employees to support or oppose unionization, and Covered Employers may not directly use CITY funds to schedule or hold meetings related to union representation during the Covered Employees' working hours. These restrictions do not apply to expenditures made during good-faith collective bargaining or to expenditures required under bona fide collective-bargaining agreements.

No Reduction in Non-Wage Benefits

Under the LWO, Covered Employers may not fund any wage increases required by the LWO, nor shall Covered Employers otherwise respond to the enactment of the LWO, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of their employees.

No Retaliation

The LWO prohibits a Covered Employer from taking any adverse action against a Covered Employee because the Covered Employee does any of the following: (1) exercises or asserts his or her rights under the LWO; (2) informs or assists other Covered Employees concerning their rights and the Covered Employer's obligations under the LWO; (3) complains about the Covered Employer's failure to comply with the LWO; or (4) seeks to enforce the LWO.

No Reduction in Collective-Bargaining Wage Rates

The LWO does not require or authorize any Covered Employer to reduce wages set by a collective-bargaining agreement or required under any prevailing-wage law.

Violations and Monitoring

The LWO provides that any violation of the LWO by a CITY contractor constitutes a material breach of the contract, and authorizes the CITY to terminate the contract and pursue all available legal and equitable remedies. In order to monitor compliance, the LWO authorizes the CITY to require Covered Employers to verify their compliance with the LWO by submitting certified payroll records to the CITY, and to take such other steps as may be necessary for the CITY to determine whether the requirements of the LWO have been satisfied.

The LWO also includes provisions authorizing an employee or interested person to file a judicial action against a contractor or subcontractor for violation of the LWO.

Declaration of Compliance

To assure compliance with the LWO, any person or entity entering into a contract to provide Nonprofessional Services to or for the CITY, on or after March 1, 2004, is required to provide the CITY with a signed Declaration of Compliance in the form required by the CITY, prior to the CITY's execution of the contract. The Declaration of Compliance shall be signed by a duly authorized representative of the person or entity entering into the contract, and, when accepted by the CITY, shall constitute part of the contract.

Additional Information

- For a complete description of the LWO's provisions, refer to the LWO codified at Sacramento City Code Chapter 3.58. The Sacramento City Code is available on the internet at www.cityofsacramento.org.
- For more information on the LWO requirements and the CITY's LWO program, contact Procurement Services at 916-808-6240.

EXHIBIT F

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting

utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm, partnership, corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- **Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:**

City of Sacramento
Procurement Services Division
915 I Street, Second Floor
Sacramento, CA 95814

- **Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:**
 - **Reinstatement, injunctive relief, compensatory damages and punitive damages**
 - **Reasonable attorney's fees and costs**

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to Employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
915 I Street, Second Floor
Sacramento, CA 95814
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.